



State of Rhode Island and Providence Plantations

State House, Room 224
Providence, Rhode Island 02903
401-222-2080

Lincoln D. Chafee
Governor

June 15, 2012

TO THE HONORABLE, THE PRESIDENT OF THE SENATE:

I am transmitting to the Secretary of State, without my signature, 2012-S 2180, Substitute B/2, "An Act Relating to Health and Safety – The Hospital Conversions Act."

There is much to be praised in this bill, which overhauls the Hospital Conversions Act (HCA) first passed in 1997. It sets up an expedited process, important in times of financial difficulties for many hospitals, to make it easier for distressed Rhode Island hospitals to be acquired by non-profit hospitals. It also adds to the conditions that can be attached to an approved application by a for-profit hospital.

However, I have concerns with this legislation, which were expressed in a letter to the Senate on June 11. Two elements of the bill in particular are troubling—the judicial review language and the lack of any timeframe to evaluate compliance with the conditions attached to an HCA approval.

First, this legislation sets a standard for judicial review that is inconsistent with the Administrative Procedures Act (APA) by incorporating some language common to all judicial reviews of state agency decisions but leaving out other important language. The APA prohibits a court from "substitut[ing] its judgment for that of the agency as to the weight of the evidence on questions of fact." By omitting this language, the bill sets HCA review apart from all other agency review procedures and the corresponding decades of case law on the APA. Elimination of this important and tested standard will encourage judicial second-guessing of HCA decisions made by the Department of Health and the Attorney General following months of careful scrutiny. This irregular standard of review weakens what should be a robust process created to ensure that for-profit hospitals are operating in the best interest of Rhode Islanders.

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Second, current law and this bill both provide for conditions to be attached to an approved HCA application, but this bill fails to allow adequate time to for Health and the Attorney General determine whether the applicant has complied with those conditions. Under current law, a for-profit hospital, once approved, must wait three years before applying for another conversion. This three year period of observation and review is designed to ensure good corporate citizenship on the part of the for-profit hospital and to determine compliance with any conditions attached to its approval. Removing this important waiting period will jeopardize a key purpose of the HCA - to monitor a for-profit hospital's compliance with conditions and to assess the conversion's effects on the community before allowing further applications.


My inclination to oppose this bill has been somewhat softened by input from diverse viewpoints, including Mayor Fontaine, Congressman Cicilline, Rhode Island Building Trades, Charter Care, and many others, who all argued forcefully for the merits of the bill. When viewed from a system-wide perspective, this bill does contain measures that will support struggling community hospitals not just in Woonsocket, but across the state. Furthermore, I also plan to take steps as follows to ameliorate the problematic elements of the bill.

Notwithstanding the elimination of the mandatory three year waiting period, I will direct the Department of Health to take the time it needs to ensure that all conditions attached to an HCA approval are satisfactorily complied with before approving any further applications from a for-profit acquirer. It is important to maintain as much oversight as possible when out-of-state systems are seeking to acquire multiple hospitals over a short period of time.

I will also be introducing legislation next session to reverse the judicial review changes that were made in this bill so that the same standard of judicial review is applied to HCA determinations as every other decision subject to the APA. The high bar set by the HCA must be maintained if, as I believe, Rhode Island's health system is an integral part of our future.

Given the above reservations, I transmit the aforementioned legislation, S 2180 Substitute B, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Chafee", written over a horizontal line.

Lincoln D. Chafee
Governor